

CERTIFIED TRUE COPY



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW

124 HALSEY STREET

PO BOX 45029

NEWARK, NJ 07101

E-Mail: @law.dol.lps.state.nj.us

(973) 648-4735

March 11, 2002

JAMES E. MCGREEVEY
Governor

DAVID SAMSON
Attorney General

DOUGLAS K. WOLFSON
*Assistant Attorney General
Director*

Edward J. Dauber, Esq.
Greenberg, Dauber, Epstein & Tucker
One Gateway Center
Newark, New Jersey 07102

Re: Anthony Spain, D.M.D.

Dear Mr. Dauber:

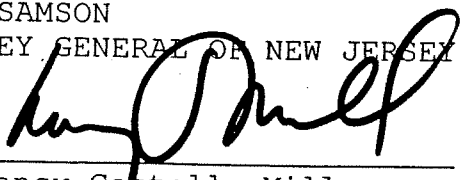
The New Jersey State Board of Dentistry reviewed your request to modify the terms of the suspension of Dr. Spain's license imposed by the Board's Final Order of Discipline. As discussed, the Board has agreed to modify the suspension period contained in its order to reflect that Dr. Spain's two (2) month period of active suspension may be taken as two thirty (30) day suspensions. The first thirty day suspension shall run from April 15, 2002, through and including May 14, 2002. The second thirty day period shall commence July 15, 2002 and shall run through and including August 14, 2002.

This letter will be attached to the Board's order to reflect the modification. If you have any questions, please call.

Very truly yours,

DAVID SAMSON
ATTORNEY GENERAL OF NEW JERSEY

By:


Nancy Costello Miller
Deputy Attorney General

cc Kevin B. Earle, Executive Director
New Jersey Board of Dentistry

RECEIVED AND FILED
WITH THE
N.J. BOARD OF DENTISTRY
ON 2-7-02 cm

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE)
SUSPENSION OR REVOCATION OF)

ANTHONY B. SPAIN, D.M.D.)
License No. 16104)

Licensed to Practice Dentistry)
in the State of New Jersey)

FINAL ORDER OF DISCIPLINE

This matter was opened to the Board of Dentistry (" Board") on information received from the Division of Criminal Justice, Office of the Insurance Fraud Prosecutor ("OIFP") demonstrating that Anthony Spain, D.M.D. ("respondent"), had pled guilty to the fourth degree crime of falsifying records in violation of N.J.S.A. 2C: 21-4a. Respondent submitted claims to Delta Dental relating to orthodontic treatment for two patients. At sentencing, respondent, having previously made restitution to the carrier, was placed on probation for 18 months. Based on the February 16, 2001, Judgment of Conviction, the Board issued a Provisional Order of Discipline on June 7, 2001, preliminarily finding grounds for disciplinary action. Pursuant to the terms of that order, respondent's license to practice dentistry was to be suspended for two (2) years, 60 days of which was to be served as an active suspension. That Provisional Order permitted respondent to provide to the Board a written submission seeking modification or dismissal of the Provisional Order.

Respondent, through counsel Edward J. Dauber, Esq., submitted a response seeking modification of the terms of the proposed discipline. In his letter dated June 28, 2001, counsel supplied the Board with a copy of a letter dated April 25, 2001, from John L. Madden, the deputy attorney general who prosecuted the case for the Division of Criminal Justice, to Agnes M. Clarke,

former Executive Director of the board; the transcript of sentencing proceedings; a copy of a letter from Robert J. DelTufo, Esq., the attorney who had represented respondent in the criminal matter, to Donald Soisson, Criminal Division, Morris County Superior Court, which letter provides respondent's "version of offense;" and excerpted portions of a Board of Dentistry newsletter that reflected dispositions of two past disciplinary actions for what counsel indicated were similar offenses. In his letter, counsel highlighted the portions of the sentencing judge's remarks, as well as those of the prosecuting deputy attorney general, reflecting the judge's and prosecutor's belief that the incident was an aberration. Counsel further urged the Board to consider the comments of Mr. DelTufo who had argued that respondent had led an otherwise exemplary and productive life. Based on those submissions, counsel asked the Board to consider a public reprimand in lieu of the proposed suspension.

In response, the deputy attorney general who prepared the Provisional Order summarized respondent's submission and noted that the Board could enter the order as originally proposed or could modify based on the materials provided by respondent. In the event that the Board chose to eliminate an active suspension, she noted that random audits as contemplated by the Provisional Order would continue.

At its meeting on July 18, 2001, the Board reviewed respondent's submissions and the deputy's response. It now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Respondent has been a licensee of the Board at all times relevant hereto.
2. On December 11, 2000, respondent pled guilty to the charge of falsifying records, in violation of N.J.S.A. 2C:21-4a, as a result of misrepresenting actual treatment dates of two

patients, L.G. and C.V.G. on an insurance submission. (Judgment of Conviction annexed to this Order).

3. Respondent began orthodontic treatment for the two patients in 1995 while the patients' treatment was partially covered by the State Medicaid program. The patients' mother was making payments on the balance. In 1998, the patients' mother, through her employer, obtained dental benefits with Delta Dental.

4. Respondent submitted claims to Delta Dental which contained false statements and information regarding when the orthodontic services were provided.

5. Respondent paid restitution to Delta Dental in the amount of \$2,000 prior to the initiation of criminal proceedings and resigned as a provider under the Delta Dental Plan.

6. A Judgment of Conviction was entered on February 16, 2001.

CONCLUSIONS OF LAW

Respondent's actions, as conclusively established by the Judgment of Conviction, provide grounds for discipline in that they constitute acts of dishonesty, fraud, deception and misrepresentation in violation of N.J.S.A. 45:1-21(b); acts of professional misconduct in violation of N.J.S.A. 45:1-21(e) and acts in violation of insurance fraud prevention laws pursuant to N.J.S.A. 45:1-21(k). In addition, the conviction is for a crime of moral turpitude as well as a crime that relates adversely to the practice of dentistry, and thus provides basis for disciplinary action pursuant to N.J.S.A. 45:1-21(f).

The costs associated with insurance fraud are high. They include increased insurance premiums and diminished respect for the profession. The Board does not treat lightly those licensees who choose to submit false claims to an insurance company, even when the beneficiary of the

submission may include the patient. In this matter, respondent had provided orthodontic treatment for a significant period of time. He had received payments toward those services both from the State Medicaid program and the patients' mother. Upon the employment of the patients' mother and with the occasion of new dental benefits, respondent choose to bill Delta Dental for those services - services which he had provided and for which he had been compensated as expected when the treatment commenced. The Board finds this behavior to be an egregious example of a dentist deliberately taking advantage of an insurance plan through the altering of treatment dates to secure a pecuniary advantage.

The Board has fully considered the statements of counsel that have been submitted asserting that this conduct was an aberration and the beliefs espoused by participants in the criminal matter that respondent is unlikely to commit such an offense again. While that may be true, it does not change the basic fact before the Board: respondent deliberately falsified an insurance claim form and submitted the form in expectation of payment for services that were not performed as stated. The Board will not be tolerate such conduct by its licensees. Respondent's mitigation is unpersuasive and the penalty proposed in the Provisional order of Discipline will stand.

IT IS, THEREFORE, on this 6th day of February, 2002,

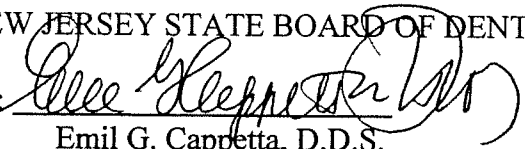
ORDERED THAT:

1. The license of Anthony B. Spain, D.M.D. to practice dentistry in the State of New Jersey is hereby suspended for a period of two (2) years, commencing on March 1, 2002. The first sixty (60) days of the suspension shall be active and the remainder of the suspension shall be stayed and served as a period of probation. During, the sixty (60) day active period of suspension, respondent shall observe the provisions of the Directives for Dentists whose Licenses have been Suspended or Revoked, a copy of which is attached to this order.

2. During the two year period of suspension, respondent shall submit to random audits by the Enforcement Bureau of his patient and billing records as they relate to his requests for insurance reimbursement. These audits shall be conducted at respondent's expense.

NEW JERSEY STATE BOARD OF DENTISTRY

By:


Emil G. Cappetta, D.D.S.

Board President

**DIRECTIVES APPLICABLE TO ANY DENTISTRY BOARD LICENSEE
WHO IS SUSPENDED, REVOKED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

A practitioner whose license is suspended or revoked or whose surrender of license has been accepted by the Board, shall conduct him/herself as follows:

1. Document Return and Agency Notification

The licensee shall promptly deliver to the Board office at 124 Halsey Street, 6th floor, Newark, New Jersey 07102, the original license and current biennial registration certificate, and if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances Registration. With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board.

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of dentistry in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry. The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee of this Board provides health care services. Unless otherwise ordered by the Board, the disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by the practice or any other licensee or health care provider. In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from all prescription blanks and pads, professional listings, telephone directories, professional stationery, or billings. If the licensee's name

is utilized in a group practice title, it shall be deleted.

Prescription pads bearing the licensee's name shall be destroyed. A destruction report form shall be obtained from the Office of Drug Control (973-504-6558) and filed with that office. If no other licensee is providing services at the practice location, all medications must be removed and returned to the manufacturer (if possible), or destroyed or safeguarded. In situations where the licensee has been suspended for a period of less than one year, prescription pads and medications must be secured in a locked place for safekeeping.

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice, and shall be required to comply with the requirements to divest him/herself of all financial interest in the professional practice pursuant to Board regulations contained in N.J.A.C. 13:30-8.21. Such divestiture shall occur within 90 days following the entry of the Board Order. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the New Jersey Department of Treasury, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Patient Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to patient records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her patient's record or asks that the record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

A disciplined practitioner whose active suspension of license has been stayed in full or in part, conditioned upon compliance with a probation or monitoring program, shall fully cooperate with the Board or its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a.) Monitoring of practice conditions may include, but is not limited to, inspection of professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with Board Order and accepted standards of practice.

(b.) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual or facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by the rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and by providing the designated sample.

6. Reports of Reimbursement

A disciplined practitioner shall promptly report to the Board his/her compliance with each directive requiring monies to be reimbursed to patients to other parties or third party payors or to any Court.

7. Report of Changes of Address

A disciplined practitioner shall notify the Board office in writing within ten (10) days of change of address.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Dentistry are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record thereof, including the transcript and documents marked in evidence, are available for public inspection upon request.

Pursuant to Public Law 101-191, the Health Insurance Portability and Accountability Act, the Board is obligated to report to the Healthcare Integrity and Protection Data Bank any adverse action relating to a dentist:

- (1) Which revokes or suspends (or otherwise restricts) a license; or
- (2) Which censures, reprimands or places on probation, or restricts the right to apply or renew a license; or
- (3) Under which a license is surrendered.

In accordance with an agreement with the American Association of Dental Examiners, a report of all disciplinary orders is provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order may appear on the public agenda for the monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board. In addition, the same description may appear on the Internet Website of the Division of Consumer Affairs.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.